

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHARLES A. GOTTSCHALK,)	
an individual and derivatively as a member)	
of Chip Ganassi Group, L.L.C., an Illinois)	
Limited Liability Company,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-1648
)	
NATIONAL JOCKEY CLUB,)	Judge Conti
an Illinois Corporation,)	Magistrate Judge Hay
JEFFREY W. KROL & ASSOCIATE, LTD.,)	
an Illinois Corporation,)	
)	
Defendants.)	

MEMORANDUM ORDER

The defendants have filed a Motion to Dismiss, or in the alternative, to Transfer Venue (doc. 10), arguing for dismissal of the Complaint as against defendant Jeffrey W. Krol & Associate, Ltd. ("Krol"), pursuant to Fed.R.Civ.P. 12(b)(2), for lack of sufficient minimum contacts with the Commonwealth of Pennsylvania to subject him to personal jurisdiction in this district. The defendants have also moved for dismissal of the Complaint against them, pursuant to Fed.R.Civ.P. 12(b)(3) and 28 U.S.C. § 1406, arguing that venue is improper in this district. Lastly, the defendants have moved, pursuant to 28 U.S.C. § 1404(a), to transfer venue to the Northern District of Illinois where the case may be consolidated with another case, which is currently pending in that district.

In response to the motion to dismiss or transfer venue, the plaintiff filed a Counter-Motion for Jurisdictional and Venue Discovery (doc. 13). In support of his motion, the plaintiff provided his Affidavit and supporting documents to demonstrate that defendant Krol has

attended meetings in the Western District of Pennsylvania, made telephone calls to this district, and sent faxes and correspondence to this district.

“Although the plaintiff bears the burden of demonstrating facts that support personal jurisdiction ... courts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff’s claim is ‘clearly frivolous.’” Toys “R” Us, Inc. v. Step Two, S.A., 318 F.3d 446, 456 (3d Cir. 2003)(internal citations omitted). However, the plaintiff must proffer some indication that the defendants are amenable to suit in this forum before a court will order jurisdictional discovery. Id.; Mellon Bank (East) PSFS, Nat’l Ass’n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992). Within the Third Circuit, “serial business trips to the forum state [and] telephone and fax communications directed to the forum state” may form part of the minimum contacts with the forum state needed to establish personal jurisdiction. Toys “R” Us, Inc., 318 F.3d at 453-54 (internal citation omitted). Having provided evidence that defendant Krol made business trips and telephone calls and sent fax and letter communications to this district, it appears that the plaintiff has made the requisite showing to be entitled to jurisdictional discovery. Id., at 456 (citing cases).

AND NOW, this 24th day of January, 2006, for the foregoing reasons, IT IS HEREBY ORDERED that the defendants’ Motion to Dismiss, or in the alternative, to Transfer Venue (doc. 10) is DENIED without prejudice.

IT IS FURTHER ORDERED that plaintiff’s Counter-Motion for Jurisdictional Discovery (doc. 13) is GRANTED in part and DENIED in part. The motion is GRANTED to the extent that plaintiff shall have until March 31, 2006, to conduct jurisdictional and venue

discovery, including depositions, document requests and the like. The motion is DENIED in all other respects.

IT IS FURTHER ORDERED that the defendants may file, if necessary, a renewed motion to dismiss not sooner than April 14, 2006, that is, ten days after the close of jurisdictional and venue discovery.

By the Court,

/s/ Amy Reynolds Hay
AMY REYNOLDS HAY
United States Magistrate Judge

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